



October 5, 2000

Mr. Steven D. Monté
Assistant City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR2000-3840

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141055.

The City of Dallas Police Department (the "department") received a request for an offense report concerning an alleged sexual assault. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code protects from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" if "release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You state that the case in question remains open and pending. Accordingly, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime, *see Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases), and we conclude that the department may withhold most of the submitted information.

We note, though, that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 185. However, because this basic information includes information about an alleged sexual assault, certain basic information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure information that is "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Included within this exception is information protected under the common

law right to privacy. The doctrine of common law privacy protects information if: (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in it. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We have previously concluded that a sexual assault victim has a common law privacy interest that prevents disclosure of information that would identify her. *See Open Records Decision No. 339* (1982); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Because the requested documents pertain to a sexual assault, you must withhold any information tending to identify the sexual assault victim. We have marked the identifying information that must be withheld. You must release all other basic information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

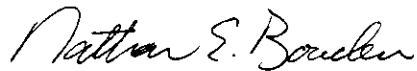
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/ljp

Ref: ID# 141055

Encl. Submitted documents

cc: Ms. Linda Gruben
3410 Lawnview
Dallas, Texas 75227
(w/o enclosures)